S.B.CIVIL REVIEW PETITION NO.3/2007
(Heera Lal Pokharna Vs. General Insurance Corporation of India & others).

DATED: 12.07.2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. K.L.Khatri for the petitioner
Mr. Rajat Dave for the respondents

The writ petition filed by the petitioner being S.B. Civil Writ Petition No. 3351/1991: Heera Lal Pokharna Vs. General Insurance Corporation of India was heard and decided by the learned Single Judge of this Court on 22.09.1999 by the following order : -

> "*By this petition the petitioner has challenged the action of the respondents in stopping his non-core allowance and reducing his pay by increments sum on the ground that his performance is not proper. The basic claim made by the petitioner is that this amounts to punishment and it cannot be inflicted without due process of law, without holding enquiry and without giving notice.*
>
> *A perusal of the reply filed by the respondents will show that the entire claim of the petitioner that it is a punishment is baseless. What has been done to the petitioner is relaxation of his perquisites as his work did not co-relate with the cost ratio as is determined by the Insurance Company. Such deduction or reduction is not a punishment. Consequently, the provisions of law requiring observance of the principles of natural justice and procedure of enquiry are not attracted in the present circumstances. If the petitioner has any grievance about the wrongful deduction making from his salary, the remedy lies in filing a civil suit for wrongful deduction and not a petition. Hence the petition is dismissed."*

The matter was taken in intra-court appeal by the petitioner being D.B. Civil Special Appeal No. 1412/1999 and the same was decided by the Hon'ble Division Bench on 02.08.2000 with the following order : -

> *"Mr. Vyas learned counsel for the appellant tried to raise certain points which were not reflected in the order passed by the learned Single Judge. When we asked Mr. Vyas, he stated at the bar that he had raised these contentions but they were not dealt with in the order passed by the learned Single Judge. If that is so then in our considered opinion the appellant must go before the learned Single Judge by way of review and thereafter, only he can come to this Court, otherwise, this Court will not entertain such arguments which are not considered and decided by the learned Single Judge in his impugned order.*
>
> *In view of this, learned counsel Shri Vyas seeks permission to withdraw this special appeal as he wants to approach before the learned Single Judge. Permission granted.*
>
> *Disposed of as withdrawn.*
>
> *At this stage, he expressed his apprehension that his review would be time barred, therefore, learned Single Judge may be directed to condone the delay in filing the review petition late and decide the same on merits.*
>
> *Instead of issuing such directions, we are of the opinion that if the appellant makes such review petition within one month from today before the learned Single Judge with an application for condonation of delay then we are sure that the learned Single Judge will consider the fact of pendency of this appeal for all these period and he will try to decide the same in accordance with law"*

Thus, it appears that before the Hon'ble Division Bench certain points were sought to be raised which were not reflected in the order passed by the learned Single Judge; and thereupon the Division Bench was of the view that if any contention was raised and not dealt with, the appellant i.e. the petitioner must go before the Single Judge by way of review application and then only he could come in appeal. The appeal was withdrawn by the petitioner-appellant and was, accordingly, dismissed as withdrawn with observations to the effect that while considering condonation of delay in filing the review application, the fact that matter was pending in appeal may be taken into consideration.

Thereafter, this review petition was filed on 08.09.2000; and delay in filing the same was condoned on 05.01.2007 particularly in view of the observations made by the Hon'ble Division Bench. Learned counsel for the parties have now been heard on merits of this review petition.

The petitioner has sought review of the order dated 22.09.1999 essentially stating the ground thus:

> *"That while arguing the writ petition petitioner argued many grounds such as "without extending any warning there was no justification to deduct the non-core allowance from 1985." Petitioner quote in the writ petition, Para 11(3) of the scheme of 1976 and also quote the subsequent amendment Scheme of 1987, Para 11(3) and (4), and also argued the same and*

> *signed that non-petitioner could take place* (sic) *until and unless a regular disciplinary enquiry was held against the petitioner and after necessary explanation and hearing only such penalty could be imposed on the petitioner. Many other arguments and grounds raised before the Hon'ble Single Bench as mention in writ petition, but these grounds the Hon'ble Single Bench not consider in his order* (sic)*."*

While arguing on this review petition learned counsel Mr. K.L. Khatri submitted that as per the requirements of paragraph 11(3) of the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976, if cost ratio in respect of development officer was found to be in excess of the stipulated limit he was required to be issued a letter of warning before any step in the nature of reduction of his non-core allowance and decrements in basic pay could be undertaken; and no such warning letter was issued to the petitioner and no inquiry was held and, therefore, the action taken against the petitioner being fundamentally illegal deserves to be quashed.

Having heard learned counsel for the petitioner, this Court is satisfied that this review petition remains fundamentally bereft of substance and deserves to be rejected.

By the order dated 22.09.1999 the learned Single Judge of this court on the basis of the reply filed by the respondents found that in relation to the petitioner his

perquisites were relaxed as his work did not co-relate with the cost ratio and the learned Single Judge was of opinion that such deduction or reduction was not of any punishment and held consequently that the provision of law requiring observance of principles of natural justice and procedure of inquiry were not attracted in the present circumstances; and further observed that if the petitioner has any grievance about the wrongful deduction made from his salary, his remedy lay in filing civil suit in that regard.

The substratum of arguments advanced by the learned counsel now appearing for the petitioner in this review petitoin remains essentially the same as was considered by the learned Single Judge while dismissing the writ petition on 22.09.1999. In view of the aspects considered in the order dated 22.09.1999, the findings recorded, and the conclusion reached, it cannot be said that the arguments of the petitioner of denial of adequate opportunity of hearing and want of enquiry were not considered. It is a different matter that paragraph 11(3) of the Scheme of 1976 as such has not been referred in the order dated 22.09.1999 but that does not take away the substance of the matter considered and decided by the learned Single Judge.

Apart from the aforesaid that the order dated 22.09.1999 cannot be said to have been passed without

considering the contention that has now been urged on behalf of the petitioner, and even while ignoring the fundamental lacuna in this review petition that the particular assertion about non-consideration of a contention urged is not supported by specific affidavit of the counsel concerned, this Court is clearly of opinion that even otherwise, in view of the averments taken by the respondents in reply to the writ petition, it cannot be said that the petitioner has not been pointed out the shortcomings and has not been warned as required by the provisions of the Rationalisation Scheme.

A review petition is definitely not in the nature of an appeal against the earlier order or for rehearing of the matter; and having examined the record of the case, this Court is satisfied that on the basis of the submissions made, no case is made out to review the order 22.09.1999.

The petition for review is, therefore, rejected.

(DINESH MAHESHWARI),J.

Nawal